

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1516 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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HEMLATABEN WD/O. HARSHADBHAI CHHOTUBHAI DESAI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR U.L.C.

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Appearance:

MR MUKESH R SHAH for Petitioner

MR SP DAVE, AGP for Respondent No. 1

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 26/02/97

ORAL JUDGEMENT

Rule. Learned Govt. Counsel Mr.S.P.Dave waives the service of Rule.

There are orders of this Court in Special Civil Application No. 9934 of 1988, decided on January 31, 1996.

In the said proceedings, the grievance made by the petitioner was that, her application for the sanction of the scheme under Section 21 of the ULC Act, 1976 was required to be decided by the concerned authority. This Court was pleased to direct the respondent no.3 to dispose of the application of the petitioner with a period of one month from the date of the receipt of the writ. These orders did not appear to have been complied with. This is clear from the communication dated February 6, 1997, available at Annexure.D. The Competent Authority, Surat says in this communication that the matter has travelled upto Sections 10(3) and 10(5) of the ULC Act, 1976 and, therefore, the petitioner should show the cause as to why the scheme presented by her should not be de-recognised. It is, at this juncture, that the petitioner approaches me, once again, by a fresh petition.

The orders passed by this Court in Special Civil Application No. 9934 of 1988 are elaborately clear. The respondent no.3 was directed to decide the application of the petitioner under Section 21 of the ULC Act, 1976. The objection on the part of the Competent Authority that the proceedings have travelled upto Sections 10(3) and 10(5) of the ULC Act, 1976 does not appear to be sustainable in view of the Bench decision of this Court in SAMRATHBEN MANILAL CHOKSHI AND ANR. vs. STATE OF GUJARAT AND ANR., 35(1) GLR P.204. It is made clear in this Bench pronouncement that:

"Thus, we find that we have to apply the ratio of the Full Bench to the facts of the present case and hold that the processes under the Act prosecuted beyond the stage of Sec.10(2) of the Act cannot survive and as to the future need to prosecute further processes after the stage of Sec.10(2) of the Act it will depend upon the decision in the application under Sec.21 of the Act. Accordingly, we allow this Letters Patent Appeal, set aside the order of the learned single Judge dated 18th September 1984 in Special Civil Application No. 1735 of 1984 and we make the following order in that Special Civil Application:

xxxx xxxx xxxx xxxx"

Looking to the above said Bench pronouncement, it appears that the proceedings being decided by the Competent Authority does not appear to be sustainable.

The petition, therefore, is allowed and the respondent herein is directed to decide the above said application of the petitioner according to law and on merits, dis-regarding the fact that the proceedings have travelled upto Sections 10(3) and 10(5) of the ULC Act, 1976. This should be done within a reasonable time frame. Rule is made absolute accordingly, with no order as to costs. Direct service is permitted.

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